

1 [Identification of All Parties and
2 All Counsel Appear on Signature Page]
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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**

9
10 **CHEVRON TCI, INC.,**

11 **Plaintiffs,**

12
13 **vs.**

14 **CARBONE PROPERTIES MANAGER,**
15 **LLC, ET AL.,**

16 **Defendants.**
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18

)
) Civil Action No. 3:08-CV-00782
)
)

) **COMBINED JOINT CASE**
) **MANAGEMENT CONFERENCE**
) **STATEMENT AND RULE 26(f) REPORT**

) Case Management Conference Date:
) May 9, 2008
) Time: 1:30 p.m.
) Before: Hon. Joseph C. Spero
)
)
)

19 This Case Management Statement is submitted jointly by Plaintiffs CHEVRON TCI, INC.
20 ("CHEVRON") and Defendants CARBONE PROPERTIES MANAGER, LLC ("CPM"), ROSS P.
21 CARBONE ("ROSS CARBONE"), and R. P. CARBONE COMPANY ("RPCC") (collectively,
22 "CARBONE") pursuant to the Court's Standing Order regarding the "Contents of Joint Case
23 Management Statements."

24 On Friday April 18, 2008, counsel for all parties met and conferred by telephone to discuss
25 various issues relating to the case, in preparation for this Joint Statement.

26 **I. Jurisdiction and Service**

27 All parties to the action have been served and appeared. This Court has federal subject
28 matter jurisdiction over this action pursuant to 28 U.S.C., section 1332 since the matter in

1 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between
2 citizens of different States. This Court has personal jurisdiction over each defendant in this action,
3 at least because each party has consented to said jurisdiction pursuant to a Promissory Note between
4 the parties dated April 2007 (the "Promissory Note"). Venue is proper in this district because
5 CHEVRON has its principal place of business in this district. Further, the Promissory Note
6 provides for venue in San Francisco, California.

7 CHEVRON and CARBONE do not currently intend to add any new parties to the action.

8 **II. Facts**

9 **CHEVRON states:**

10 On or about December 30, 2004, CHEVRON and CPM entered into the Operating
11 Agreement of Carbone Properties Operating Company, LLC (the "Company") dated December 30,
12 2004 (the "Operating Agreement"). The Company was formed to lease an historic building known
13 as the Audubon Building in New Orleans, Louisiana and to operate the building as a hotel after
14 rehabilitation by the building owner, Carbone Properties of Audubon, LLC ("CPA"). CPA is and
15 was under the common control of ROSS CARBONE and the defendants.

16 A key aspect of the investment to CHEVRON was the availability of historic rehabilitation
17 tax credits that would be earned through the rehabilitation and preservation of the building. The
18 credits would be earned by CPA, would pass through to the Company, and ultimately would pass
19 through to CHEVRON pursuant to certain agreed upon terms. Accordingly, based upon the
20 availability of tax credits and other inducements, Chevron invested \$1,961,349 as Capital
21 Contributions into the Company.

22 Pursuant to Section 7.4(N) of the Operating Agreement, CHEVRON had the right to have
23 its interest in the Company repurchased by CPM if the project was not completed by November 30,
24 2006. The project was not completed by that date. On January 5, 2007, CHEVRON notified ROSS
25 CARBONE and CPM in writing, pursuant to Section 7.4(N) of the Operating Agreement, of
26 CHEVRON's election of its right to have its interest in the Company repurchased by CPM, with an
27 effective repurchase date of February 5, 2007 and a repurchase amount of \$2,311,470.

28 CPM did not make payment to CHEVRON by February 5, 2007. On February 14, 2007 and
then again on April 4, 2007, CHEVRON notified the defendants that they had failed to comply with

1 their repurchase obligations. CHEVRON and CPM then negotiated terms for CPM's repurchase of
2 CHEVRON's interest in the Company.

3 On April 30, 2007, CHEVRON, CPM and the Company entered into the Agreement and
4 Instrument of Transfer (the "Agreement"). Pursuant to the Agreement, CPM agreed to pay
5 CHEVRON \$2,367,710 plus compound interest at twelve percent until June 26, 2007 and, if not
6 paid by that date, fifteen percent thereafter (the "Obligation"). The Obligation also was evidenced
7 by a Promissory Note, with CPM as the payor and CHEVRON as the payee.

8 RPC and ROSS CARBONE guaranteed CPM's obligations under the Agreement and the
9 Promissory Note, including the Obligation. In exchange for those promises to pay, CHEVRON
10 transferred its rights and interest in the Company to CPM.

11 CHEVRON has performed all obligations to be performed under the Promissory Note.
12 Pursuant to the Agreement and the Promissory Note, the Obligation came due and owing on June
13 26, 2007. No payment was made at that time. On July 2, 2007, CPM paid CHEVRON \$200,000
14 toward satisfaction of the Obligation, leaving the majority of the amount owed unsatisfied.

15 Pursuant to the Promissory Note, "[i]f any payment hereunder shall become overdue ... for
16 a period in excess of five (5) days, [CHEVRON] may at its option charge [CPM] a 'late charge' in
17 the amount of five percent (5%) of such overdue payment, for the purpose of defraying the expense
18 incident to handling such delinquent payment." Payment on the Promissory Note has been overdue
19 in excess of five days. The Promissory Note further provides for the payment of attorneys' fees and
20 other costs incurred by CHEVRON in collecting on the note, or in otherwise protecting its interests
21 in regard thereto.

22 CARBONE states:

23 On December 30, 2004, CPM and CHEVRON entered into the Operating Agreement
24 pursuant to the Company's lease of the Audubon Building in New Orleans, Louisiana, which the
25 Company was to operate as a full-service hotel upon the completion of certain renovations. Also on
26 December 30, 2004, Carbone Properties of Audubon, LLC ("CPOA"), which owns the Audubon
27 Building, had entered into certain agreements with Marshall Investments Corporation ("Marshall"),
28 one of which was a loan agreement ("Loan Agreement"). Pursuant to the Loan Agreement,
Marshall agreed to finance a significant portion, if not all, of the renovations necessary to complete
the Audubon Building project in exchange for a note from CPOA and guarantees from, among
others, RPCC and Ross Carbone. On December 13, 2005, an action captioned *Marshall*

1 *Investments Corp. v. R.P. Carhone Company, et. al*, was filed in the United States District Court,
2 Eastern District of Louisiana, Case No. 05-6486, wherein RPCC and Ross Carbone, among others,
3 have asserted that, beginning in July, 2005, Marshall breached the Loan Agreement by improperly
4 refusing to provide legitimate draw requests pursuant thereto and by further refusing to provide any
5 of the agreed-upon financing following Hurricane Katrina in August, 2005. This matter remains
6 pending.

7 As a result of Marshall's breach of the Loan Agreement, the Audubon Building project
8 could not be completed by November 30, 2006, which triggered CHEVRON to invoke its alleged
9 right to demand CPM to repurchase CHEVRON's interest in the Company pursuant to the
10 Operating Agreement.

11 III. Legal Issues

12 CHEVRON states:

13 1. Whether CPM breached the Agreement and failed to pay under the Promissory Note by,
14 among other things, failing to pay CHEVRON the principal and interest due under the Agreement
15 and the Promissory Note, either upon maturity or at any time thereafter.

16 2. Whether CHEVRON has been damaged in the amount of the principal, interest and
17 charges owed under the Agreement and the Promissory Note as a direct and proximate result of
18 CPM's breach of its obligations under the Agreement and the Promissory Note.

19 3. Whether CHEVRON is entitled to the costs for enforcement of the Agreement and the
20 Promissory Note, attorneys' fees, and incidental and consequential damages in an amount to be
21 proven at trial.

22 4. Whether, as guarantors under the Agreement, ROSS CARBONE and RPC are in breach
23 of their guarantees for failure to pay the full amount owed under the Agreement and the Promissory
24 Note following CPM's failure to pay CHEVRON upon maturity or at any time thereafter.

25 IV. Motions

26 CHEVRON states:

27 CHEVRON anticipates filing a Motion for Summary Judgment should this case move
28 forward.

1 CARBONE states:

2 CARBONE reserves the right to file a Motion for Summary Judgment should this case
3 move forward.

4 **V. Amendment of the Pleadings**

5 CHEVRON states:

6 CHEVRON does not anticipate filing any amendments to the pleadings at this time.

7 CARBONE states:

8 CARBONE does not anticipate filing any amendments to the pleadings at this time.

9 **VI. Evidence Preservation**

10 CHEVRON states:

11 CHEVRON has taken measures to ensure preservation of documents related to this action.
12 A preservation order has been sent out by CHEVRON's in-house counsel suspending document
13 retention/document destruction policies applicable to materials reasonably related to the subject
14 matter of this lawsuit.

15 CARBONE states:

16 CARBONE has taken measures to ensure preservation of documents related to this action. A
17 preservation order has been sent out by CARBONE'S counsel suspending document
18 retention/document destruction policies applicable to materials reasonably related to the subject
19 matter of this lawsuit.

20 **VII. Automatic Disclosures**

21 The parties have agreed to an initial disclosure date of May 30, 2008, pursuant to Fed. R.
22 Civ. P. 26(f).

23 **VIII. Discovery**

24 No discovery has been taken to date. The parties contemplate conducting discovery in
25 accordance with the Federal Rules of Civil Procedure without modification. Please see the
26 proposed schedule under paragraph XVII below for the parties proposed schedule and discovery
27 plan.
28

1 **IX. Class Action**

2 This case is not a class action.

3 **X. Related Cases**

4 The parties are not aware of any related cases pending in any venue or jurisdiction.

5 **XI. Relief**

6 **CHEVRON states:**

7 Pursuant to the Agreement, CPM agreed to pay CHEVRON \$2,367,710 plus compound
8 interest at twelve percent until June 26, 2007 and, if not paid by that date, fifteen percent thereafter
9 (the "Obligation"). On July 2, 2007, CPM paid CHEVRON \$200,000 toward satisfaction of the
10 Obligation, leaving the majority of the amount owed unsatisfied. CHEVRON seeks a recovery of
11 the unsatisfied amount owed from CPM plus payment of attorneys' fees and other costs incurred by
12 CHEVRON in collection on the note, or in otherwise protecting its interests in regard thereto.

13 **CARBONE states:**

14 CARBONE has asserted no affirmative claims for relief in this case.

15 **XII. Settlement and ADR**

16 The parties are currently engaged in settlement discussions. The parties would agree to
17 mediation after discovery, should settlement talks fail.

18 **XIII. Consent to Magistrate Judge for All Purposes**

19 **CHEVRON states:**

20 CHEVRON has submitted its consent to proceed before a magistrate judge.

21 **CARBONE states:**

22 CARBONE has submitted its consent to proceed before a magistrate judge.

23 **XIV. Other References**

24 The parties agree that this case is not suitable for reference to binding arbitration, a special
25 master, or the Judicial Panel on Multidistrict Litigation.
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1 **XV. Narrowing of Issues**

2 CHEVRON states:

3 CHEVRON believes that this is an appropriate case for summary judgment and will likely
4 so move.

5 CARBONE states:

6 CARBONE believes that the issues involved in this case have been fully set forth herein.

7 **XVI. Expedited Schedule**

8 CHEVRON states:

9 CHEVRON does not believe that this case should be handled on an expedited basis.

10 CARBONE states:

11 CARBON does not believe that this case should be handled on an expedited basis.

12 **XVII. Scheduling**

13 The parties propose the following case schedule:

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|---|-------------------|
| 14 1. Initial Disclosures | May 30, 2008 |
| 15 2. Fact Discovery Completed | November 14, 2008 |
| 16 3. Experts Reports – Burden | December 5, 2008 |
| 17 4. Experts Reports – Responsive | December 15, 2008 |
| 18 5. Expert Discovery Completed | January 9, 2009 |
| 19 6. Rule 56 and Other Dispositive Motions Filed | February 13, 2009 |
| 20 7. Hearing of Dispositive Motions | March 13, 2009 |
| 21 8. Final Pretrial Conference | April 29, 2009 |
| 22 9. Trial | May 28, 2009 |

23 **XVIII. Trial**

24 The parties agree that the case will be tried to the court. The expected length of the trial is
25 two days.

1 **XIX. Disclosure of Non-party Interested Entities or Persons**

2 **CHEVRON states:**


3 CHEVRON has filed a Certification of Interested Entities or Persons, as required by Civil
4 Local Rule 3-16, and a Corporate Disclosure Statement pursuant to Federal Rule of Civil Procedure
5 7.1. As previously stated, Chevron TCI, Inc. is a California corporation that is 100% owned by
6 Chevron Global Energy Inc. Chevron Global Energy Inc., a Delaware corporation, is not a publicly
7 held corporation. CHEVRON certifies that no other interested persons, associations of person,
8 firms, partnerships, corporations (including parent corporations) or other entities are known other
9 than the named parties to the action.

10 **CARBONE states:**

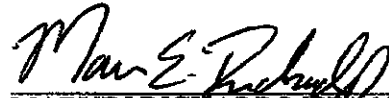
11 CARBONE has filed a Certification of Interested Entities of Persons, as required by Civil
12 Local Rule 3-16, and a Corporate Disclosure Statement pursuant to Federal Rule of Civil Procedure
13 7.1. Carbone Properties Manager, LLC is a Louisiana limited liability company that has no parent
14 corporation. R. P. Carbone Company is an Ohio corporation has no parent corporation. There are
15 no publicly held corporations that own 10% or more of the stock of either Carbone Properties
16 Manager, LLC or R. P. Carbone Company. CARBONE certifies that no other interested persons,
17 associations of persons, firms, partnerships, corporations (including parent corporations) or other
18 entities are known other than the named parties to the action.

19
20 Dated: May 2, 2008

Respectfully submitted,

21 
22 MATTHEW VAFIDIS [SB# 103578]
23 ANDREW T. CAULFIELD [SB# 238300]
24 JOSHUA KRUMHOLZ (*pro hac vice*)
25 ELIZABETH BURKHARD (*pro hac vice*)
26 **HOLLAND & KNIGHT LLP**
27 50 California Street, 28th Floor
28 San Francisco, California 94111
Telephone: (415) 743-6900
Facsimile: (415) 743-6910
Attorneys for Plaintiffs

1
2 Dated: May 2, 2008



MARVIN RICHARDS [SB# 199834]

ROETZEL & ANDRESS, LPA

222 S. Main Street

Akron, OH 44308

Telephone: (330) 376-2700

Facsimile: (330) 376-4577

JOHN S. GILMORE (SB# 32491)

RANDOLPH CREGGER AND CHALFANT, LLP

1030 G Street

Sacramento, CA 95814

Telephone: (916) 443-4443

Facsimile: (916) 443-2124

Attorneys for Defendants

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